

SECOND REGULAR SESSION

SENATE BILL NO. 817

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS KENNEDY AND GRIESHEIMER.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

2911S.011

AN ACT

To repeal sections 337.500, 337.505, 337.507, 337.510, 337.515, 337.520, 337.525, 337.530, 337.535, 337.540, 337.700, 337.703, 337.706, 337.709, 337.712, 337.715, 337.718, 337.727, 337.730, 337.733, 337.736, and 337.739, RSMo, and to enact in lieu thereof twenty-two new sections relating to the licensure of mental health professionals, with penalty provisions and a contingent effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 337.500, 337.505, 337.507, 337.510, 337.515, 337.520, 337.525, 337.530, 337.535, 337.540, 337.700, 337.703, 337.706, 337.709, 337.712, 337.715, 337.718, 337.727, 337.730, 337.733, 337.736, and 337.739, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 337.300, 337.303, 337.305, 337.306, 337.312, 337.315, 337.400, 337.403, 337.406, 337.409, 337.412, 337.415, 337.418, 337.430, 337.433, 337.440, 337.505, 337.507, 337.510, 337.515, 337.525, and 337.530, to read as follows:

337.300. As used in sections 337.300 to 337.315, sections 337.400 to 337.440, and sections 337.505 to 337.540, the following terms mean:

(1) "Board", the board of counselors and therapists established in section 337.303;

(2) "Department", the Missouri department of economic development;

(3) "Director", the director of the division of professional registration in the Missouri department of economic development;

(4) "Division", the division of professional registration;

(5) "Fund", the board of counselors and therapists fund created by section 337.312;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(6) "Licensed professional counselor", any person who offers to render professional counseling services to individuals, groups, organizations, institutions, corporations, government agencies, or the general public for a fee, monetary or otherwise, implying that the person is trained, experienced, and licensed in counseling, and who holds a current, valid license to practice counseling;

(7) "Practice of professional counseling", rendering, offering to render, or supervising those who render to individuals, couples, groups, organizations, institutions, corporations, schools, government agencies, or the general public any counseling service involving the application of counseling procedures, and the principles and methods thereof, to assist in achieving more effective intrapersonal or interpersonal, marital, decisional, social, educational, vocational, developmental, or rehabilitative adjustments;

(8) "Professional counseling", includes, but is not limited to:

(a) The use of verbal or nonverbal counseling or both techniques, methods, or procedures based on principles for assessing, understanding, or influencing behavior, such as principles of learning, conditioning, perception, motivation, thinking, emotions, or social systems;

(b) Appraisal or assessment, which means selecting, administering, scoring, or interpreting instruments designed to assess a person's or group's aptitudes, intelligence, attitudes, abilities, achievement, interests, and personal characteristics;

(c) The use of referral or placement techniques or both which serve to further the goals of counseling;

(d) Therapeutic vocational or personal or both rehabilitation in relation to coping with or adapting to physical disability, emotional disability, or intellectual disability or any combination of the three;

(e) Designing, conducting, and interpreting research;

(f) The use of group methods or techniques to promote the goals of counseling;

(g) The use of informational and community resources for career, personal, or social development;

(h) Consultation on any item in paragraphs (a) to (g) above; and

(i) No provision of sections 337.505 to 337.540, or of chapter 354 or 375, RSMo, shall be construed to mandate benefits or third-party reimbursement for services of professional counselors in the policies or contracts of any insurance company, health services corporation, or other third-party payer;

(9) "Provisional licensed professional counselor", any person who is a graduate of an acceptable educational institution, as defined by division rules,

with at least a master's degree with a major in counseling, or its equivalent, and meets all requirements of a licensed professional counselor, other than the supervised counseling experience prescribed by subdivision (1) of section 337.510, and who is supervised by a person who is qualified for the practice of professional counseling.

337.303. 1. There is hereby created a "Board of Counselors and Therapists", which shall guide, advise, and make recommendations to the division and fulfill all other responsibilities designated by sections 337.400 to 337.440 as such sections pertain to marital and family therapists and sections 337.505 to 337.540 as such sections pertain to licensed professional counselors. The duties and responsibilities of the board of counselors and therapists shall not take full force and effect until such time as the governor appoints the members of the board of counselors and therapists and the appointments are confirmed by the senate. At such time, the powers and duties of the state committee of marital and family therapists and the committee for professional counselors shall be merged into the board of counselors and therapists pursuant to section 337.305.

2. The board of counselors and therapists shall be appointed by the governor with the advice and consent of the senate and shall consist of nine members that are United States citizens and residents of this state. Of these nine members, four shall be licensed professional counselors who shall constitute the subcommittee for professional counselors, and four shall be licensed marital and family therapists who shall constitute the subcommittee for marital and family therapists, and one shall be a public voting member.

3. At least one member of each of the subcommittees and the public member of the initial board shall be appointed by the governor with the advice and consent of the senate to serve a term of four years, two members of each of the subcommittees shall be appointed by the governor with the advice and consent of the senate to serve a term of three years and the remaining members of the initial board shall be appointed for a term of two years. Thereafter, all members shall be appointed by the governor with the advice and consent of the senate to serve four-year terms. No person shall be eligible for reappointment that has served as a member of the board for a total of eight years. The membership of the board shall reflect the differences in levels of education and work experience with consideration being given to race, gender, and ethnic origins. No more than one counselor-educator shall be a member of the board at the same time.

4. At the time of appointment, the public member shall be a citizen of the United States, a resident of this state for a period of at least one year immediately preceding the appointment, and a registered voter. The public member or the

spouse of such member shall be a person who is not and never was a member of any profession licensed or regulated by the board of counselors and therapists. The public member and the spouse of such member shall be a person who does not have and never has had a material financial interest in the provision of the professional services regulated by the board of counselors and therapists, or an activity or organization directly related to any professions licensed or regulated by the board of counselors and therapists.

5. Each member of the board shall receive compensation in an amount set by the division not to exceed fifty dollars for each day devoted to the affairs of the board, including meeting and conference attendance, meeting preparation and travel, and activities related to the board and subject to approval by the director of the division. The division shall provide all staff for the board, which shall include inspectors, investigators, and clerical support.

337.305. 1. Upon appointment by the governor and confirmation by the senate of the board of counselors and therapists, the committee for professional counselors and the state committee of marital and family therapists are abolished and their duties and responsibilities shall merge into the board of counselors and therapists as established pursuant to section 337.303. The board of counselors and therapists shall be a continuance of and shall carry out the duties of the committee for professional counselors and the state committee of marital and family therapists.

2. Upon appointment by the governor and confirmation by the senate of the board of counselors and therapists, all of the powers, duties, and functions of the committee for professional counselors and the state committee of marital and family therapists are transferred to, conferred, and imposed upon the board of counselors and therapists. The board of counselors and therapists shall be the successor in every way to the powers, duties, and functions of the committee for professional counselors and the state committee of marital and family therapists.

3. Every act performed in the exercise of such powers, duties, and authorities by or under the authority of the board of counselors and therapists shall be deemed to have the same force and effect as if performed by the committee for professional counselors or state committee of marital and family therapists pursuant to sections 337.400 to 337.440 and sections 337.505 to 337.540, including any amendments thereto effective with the passage of this law or prior to the effective date of this act.

4. All rules and regulations of the committee for professional counselors and the state committee of marital and family therapists and amendments thereto shall continue to be effective and shall be deemed to be duly adopted rules and

regulations of the board of counselors and therapists until revised, amended, or repealed by the board of counselors and therapists. The board of counselors and therapists shall review such rules and regulations and shall adopt new rules and regulations as required for the administration of the licensure law for professional counselors and marital and family therapists.

5. Any person licensed or provisionally licensed as a professional counselor by the committee for professional counselors or any person licensed by the state committee of marital and family therapists prior to the appointment by the governor and confirmation by the senate of the board of counselors and therapists, shall be considered licensed as a professional counselor, provisionally licensed as a professional counselor, or licensed as a marital and family therapist by the board of counselors and therapists. Any person pursuing post-degree experience approved by the committee for professional counselors or the state committee of marital and family therapists shall be considered approved for post-degree experience by the board of counselors and therapists.

337.306. Any communication made by any person to a licensed professional counselor or a licensed marital and family therapist in the course of professional services rendered by the licensed professional counselor or the licensed marital and family therapist shall be deemed a privileged communication and the licensed professional counselor or the licensed marital and family therapist shall not be examined or be made to testify to any privileged communication without the prior consent of the person who received their professional services.

337.312. 1. There is hereby created in the state treasury a fund to be known as the "Board of Counselors and Therapists Fund" which shall consist of all moneys collected by the board of counselors and therapists.

2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriations from the board of counselors and therapists fund for the preceding fiscal year. The amount, if any, in the fund that shall lapse is that amount in the fund that exceeds the appropriate multiple of the appropriations from the board of counselors and therapists fund for the preceding fiscal year.

3. Upon appointment by the governor and confirmation by the senate of the board of counselors and therapists, all moneys deposited in the committee for professional counselors fund created in section 337.507 and the marital and family therapists fund created in section 337.712, shall be transferred to the board of counselors and therapists fund created in subsection 1 of this section. The

committee for professional counselors fund and the marital and family therapists fund shall be abolished when all moneys are transferred to the board of counselors and therapists fund.

337.315. 1. The division, on behalf of the board, shall promulgate rules and regulations pertaining to:

(1) The form and content of license applications required by the provisions of sections 337.400 to 337.440 and sections 337.505 to 337.540, and the procedures for filing an application for an initial or renewal license in this state;

(2) Fees required by the provisions of sections 337.400 to 337.440 and sections 337.505 to 337.540;

(3) The content, conduct, and administration of the licensing examinations required by sections 337.415 and 337.510;

(4) The characteristics of supervised clinical experience, as that term is used in section 337.415;

(5) The characteristics of acceptable supervised counseling experience, as that term is used in section 337.510;

(6) The equivalent of the basic educational requirements set forth in sections 337.415 and 337.510;

(7) The standards and methods to be used in assessing competency as a licensed marital and family therapist and the standards and methods to be used in assessing competency as a professional counselor;

(8) Establishment and promulgation of procedures for investigating, hearing, and determining grievances and violations occurring under the provisions of sections 337.400 to 337.440 and sections 337.505 to 337.540;

(9) Development of an appeal procedure for the review of decisions and rules of administrative agencies existing under the constitution or laws of this state;

(10) Establishment and promulgation of procedures for licensure by reciprocity with other states, including states that do not have marital and family therapist licensing laws or professional counselor licensing laws and states whose licensing laws are not substantially the same or greater than those of this state;

(11) The form and content of ethical standards for marital and family therapists, as that term is used in subdivision (15) of subsection 2 of section 337.430, and the form and content of ethical standards for professional counselors as that term is used in subdivision (15) of subsection 2 of section 337.525;

(12) The characteristics of an acceptable educational institution as that term is used in section 337.510;

(13) The characteristics of an acceptable agent for the certification of an

exempted occupation as used in section 337.505; and

(14) Any other policies or procedures necessary to the fulfillment of the requirements of sections 337.400 to 337.440 and sections 337.505 to 337.540.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 337.400 to 337.440 and sections 337.505 to 337.540 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 337.400 to 337.440 and sections 337.505 to 337.540 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

337.400. As used in sections 337.400 to 337.440 the following terms mean:

(1) "Licensed marital and family therapist", a person to whom a license has been issued pursuant to the provisions of sections 337.400 to 337.440, whose license is in force and not suspended or revoked;

(2) "Marital and family therapy", the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior within the context of marital and family systems, including the context of marital formation and dissolution. Marital and family therapy is based on systems theories, marriage and family development, normal and dysfunctional behavior, human sexuality, and psychotherapeutic marital and family therapy theories and techniques and includes the use of marriage and family therapy theories and techniques in the evaluation, assessment, and treatment of intrapersonal or interpersonal dysfunctions within the context of marriage and family systems. Marital and family therapy may also include clinical research into more effective methods for the treatment and prevention of the above-named conditions;

(3) "Practice of marital and family therapy", the rendering of professional marital and family therapy services to individuals, family groups, and marital pairs, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

337.403. No person shall use the title of licensed marital and family therapist or engage in the practice of marital and family therapy in this state unless the person is licensed pursuant to sections 337.400 to 337.440. Sections 337.400 to 337.440 shall not apply to:

(1) Any person registered, certificated, or licensed by this state, another state, or any recognized national certification agent acceptable to the board to practice any other occupation or profession while rendering services similar in nature to marital and family therapy in the performance of the occupation or profession in which the person is registered, certificated, or licensed, so long as the person does not use the title of licensed marital and family therapist;

(2) The practice of any marital and family therapist who is employed by any political subdivision, school district, agency, or department of this state while discharging the therapist's duties in that capacity; and

(3) Duly ordained ministers or clergy, religious workers and volunteers, or Christian Science practitioners.

337.406. No person may engage in marital and family therapy for compensation or hold themselves out as a licensed marital and family therapist unless the person complies with all educational and examination requirements of sections 337.400 to 337.440 and is licensed pursuant to the provisions of sections 337.400 to 337.440.

337.409. No provision of sections 337.400 to 337.440 shall be construed to require any agency, corporation, or organization, to employ licensed marital and family therapists if they are not otherwise required by law to do so.

337.412. 1. Applications for licensure as a marital and family therapist shall be in writing and submitted to the board on forms prescribed by the board and furnished to the applicant. The application shall contain the applicant's statements showing the applicant's education, experience, and such other information as the board may require. Each application shall contain a statement that is made under oath or affirmation that the information contained in the application is true and correct to the best knowledge and belief of the applicant, subject to the penalties provided for the making of a false affidavit or declaration. Each application shall be accompanied by the fees required by the board.

2. The division shall mail a renewal notice to the last known address of each licensee prior to the license renewal date. Notwithstanding this notice requirement, the failure to receive a license renewal notification from the division does not excuse the licensee from renewing his or her license as required by law. Failure to provide the board with the information required for license renewal, or failure to pay the license renewal fee within a period of sixty days from the license renewal date shall cause the license to expire. The license shall be restored if the applicant submits written application and the payment of the licensure fee and a delinquency fee within two years of the license renewal date. If a license issued by the board has expired for more than two years and the applicant has not held

a valid, unrevoked, unsuspended license as a marital and family therapist in another state at the time of application to the board, the applicant shall pay the required fee and obtain continuing education relating to the practice of marital and family therapy as defined by board rule. Continuing education required for the renewal of an expired license shall not exceed twenty hours of continuing education credit.

3. A new certificate to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules of the board, upon payment of a fee, if the board requires such fee.

4. The board shall set the amount of the fees authorized by sections 337.400 to 337.440. The fees shall be set at a level to produce revenue that shall not substantially exceed the cost and expense of administering the provisions of sections 337.400 to 337.440. All fees required pursuant to sections 337.400 to 337.440 shall be collected by the director who shall deposit the same with the state treasurer in the board of counselors and therapists fund.

337.415. 1. Each applicant for licensure as a marital and family therapist shall furnish evidence to the board that:

(1) The applicant has a master's degree or a doctoral degree in marital and family therapy or its equivalent from an acceptable educational institution accredited by a regional accrediting body or accredited by an accrediting body that has been approved by the federal Department of Education;

(2) The applicant has twenty-four months of postgraduate supervised clinical experience acceptable to the board, as the board determines by rule;

(3) Upon examination, the applicant possesses the requisite knowledge of the profession, including techniques and applications, research and its interpretation, and professional affairs and ethics;

(4) The applicant is at least eighteen years of age, is of good moral character, is a United States citizen or has status as a legal resident alien, and has not been convicted of a felony during the ten years immediately prior to application for licensure.

2. Any person holding a current, unrevoked license, certificate, or registration from another state or territory of the United States having substantially the same or greater licensing requirements as this state for marital and family therapists, as determined by the board, may be granted a license to practice as a marital and family therapist in this state upon application to the board accompanied by the appropriate fee as established by the board pursuant to section 337.412.

3. Any person who previously held a valid, unrevoked, and unsuspended

license as a marital and family therapist in this state and who holds a valid license as a marital and family therapist in another state at the time of application to the board shall be granted a license to engage in marital and family therapy in this state upon application to the board accompanied by the appropriate fee as established by the board.

4. The board shall issue a license to each person who files an application and fee as required by the provisions of sections 337.400 to 337.440, and who furnishes evidence satisfactory to the board that the applicant has complied with the provisions of subsection 1 or 2 of this section.

337.418. 1. Each license issued pursuant to the provisions of sections 337.400 to 337.440 shall expire on the renewal date established by the director. The term of licensure shall be twenty-four months; however, the director may establish a shorter term for the licenses issued pursuant to sections 337.400 to 337.440 during the first year after the creation of the board. The board shall renew any license upon application for renewal and upon payment of the fee established by the board pursuant to the provisions of section 337.412.

2. The board may issue temporary permits to practice under extenuating circumstances as determined by the board and defined by rule.

337.430. 1. The board may refuse to issue or renew any license required by the provisions of sections 337.400 to 337.440 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections 337.400 to 337.440 or any person who has failed to renew or has surrendered the person's license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to engage in the occupation of marital and family therapist; except the fact that a person has undergone treatment for past substance or alcohol abuse or has participated in a recovery program shall not by itself be cause for refusal to issue or renew a license;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere in a criminal prosecution under the laws of any state or of the United States for any offense reasonably related to the

qualifications, functions, or duties of a marital and family therapist, or for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation, or bribery in securing any license issued pursuant to the provisions of sections 337.400 to 337.440 or in obtaining permission to take any examination given or required pursuant to the provisions of sections 337.400 to 337.440;

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of a licensed marital and family therapist;

(6) Violation of or assisting or enabling any person to violate any provision of sections 337.400 to 337.440 or of any lawful rule or regulation adopted pursuant to sections 337.400 to 337.440;

(7) Impersonation of any person holding a license or allowing any person to use the person's license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice marital and family therapy granted by another state, territory, federal agency, or country upon grounds for which discipline is authorized in this state;

(9) Final adjudication as incapacitated by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice marital and family therapy who is not licensed and is not currently eligible to practice under the provisions of sections 337.400 to 337.440;

(11) Obtaining a license based upon a material mistake of fact;

(12) Failure to display a valid license if so required by sections 337.400 to 337.440 or any rule promulgated thereunder;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation that is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed; or

(15) Violation of the ethical standards for marital and family therapists as defined by board rule.

3. Any person, organization, association, or corporation reporting or providing information to the board pursuant to the provisions of sections 337.400 to 337.440 and who does so in good faith shall not be subject to an action for civil damages as a result thereof.

4. After the filing of such complaint, the proceedings shall be conducted in

accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds provided in subsection 2 of this section for disciplinary action are met, the board may censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, suspend the license for a period not to exceed three years, or revoke the license.

337.433. 1. Violation of any provision of sections 337.400 to 337.440 is a class B misdemeanor.

2. All fees or other compensation received for services that are rendered in violation of sections 337.400 to 337.440 shall be refunded.

3. The division, on behalf of the board, may sue in its own name in any court in this state. The division shall inquire as to any violation of sections 337.400 to 337.440, may institute actions for penalties prescribed, and shall enforce generally the provisions of sections 337.400 to 337.440.

4. Upon application by the board, the attorney general may, on behalf of the board, request a court of competent jurisdiction to grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a certificate of registration or authority, permit, or license is required upon a showing that such acts or practices were performed or offered to be performed without a certificate of registration or authority, permit, or license; or

(2) Engaging in any practice of business authorized by a certificate of registration or authority, permit, or license issued pursuant to sections 337.400 to 337.440 upon a showing that the holder presents a substantial probability of serious harm to the health, safety, or welfare of any resident of this state or client or patient of the licensee.

5. Any action brought pursuant to this section shall be commenced either in the county in which such conduct occurred or in the county in which the defendant resides.

6. Any action brought pursuant to this section may be in addition to or in lieu of any penalty pursuant to sections 337.400 to 337.440 and may be brought concurrently with other actions to enforce the provisions of sections 337.400 to 337.440.

337.440. 1. The division, on behalf of the board, may issue subpoenas duces tecum and require production of documents and records. A person authorized to serve subpoenas of courts of record shall serve the subpoenas duces tecum. In lieu of requiring attendance of a person to produce original documents in response to

a subpoena duces tecum, the board may require sworn copies of such documents to be filed with it or delivered to its designated representative.

2. The board may enforce its subpoenas duces tecum by applying to the circuit court of Cole County, the county of the investigation, hearing, or proceeding, or any county where the person resides or may be found for an order upon any person who shall fail to obey a subpoena to show cause why such subpoena should not be enforced, which such order and a copy of the application therefore shall be served upon the person in the same manner as a summons in a civil action. If the circuit court shall, after a hearing, determine that the subpoena duces tecum should be sustained and enforced, such court shall proceed to enforce the subpoena in the same manner as though the subpoena had been issued in a civil case in the circuit court.

3. Failure of a licensee to comply with the requirements of a validly enforced subpoena duces tecum shall constitute grounds for disciplinary action as defined in section 338.055.

337.505. No person shall use the title of "professional counselor", "counselor" or "provisional licensed professional counselor" or engage in the practice of professional counseling in this state unless the person is licensed as required by the provisions of sections [337.500] **337.505** to 337.540. Sections [337.500] **337.505** to 337.540 do not apply to:

(1) Any person registered, certificated or licensed by this state, another state, or any recognized national certification agent, acceptable to the [committee] **board**, to practice any other occupation or profession while rendering counseling service in the performance of the occupation or profession for which the person is registered, certificated, or licensed, including but not limited to physicians, psychologists and attorneys;

(2) School counselors, school administration personnel, or classroom teachers, so long as they are performing their assigned duties within the scope of their employment by a board of education or private school;

(3) Counselors in postsecondary educational institutions so long as they are practicing within the scope of their employment;

(4) Student interns or trainees in counseling procedures pursuing a course of study in counseling in an institution of higher education or training institution if such activities and services constitute a part of their course of study and provided that such persons are designated as "counselor interns";

(5) Professionals employed by postsecondary educational institutions as counselor educators so long as they are practicing counseling within the scope of their employment;

(6) Duly ordained ministers [or], clergy [or], religious workers, **or staff counselors** while functioning in their ministerial capacity **or in a religious institution or religious counseling ministries program**;

(7) Alcoholism counselors so long as they serve only individuals with alcohol related concerns;

(8) Any nonresident temporarily employed in this state to render counseling services for not more than thirty days in any year, if in the opinion of the [committee] **board** the person would qualify for a license pursuant to the provisions of sections [337.500 to 337.540] **337.505 to 337.530**, and if the person holds a license required for counselors in the person's home state or country;

(9) Duly accredited Christian Science practitioners, so long as they are practicing within the scope of Christian Science principles;

(10) Counselors employed by the Missouri state department of elementary and secondary education or the Missouri state bureau for the blind while rendering counseling services in the performance of their state assigned duties;

(11) Professionals employed by vocational and medical rehabilitation facilities accredited by the commission on the accreditation of rehabilitation facilities, the joint committee on accreditation of hospitals or other agents acceptable to the [committee] **board** while rendering counseling services in the performance of their assigned duties, and so long as they do not use the title of "counselor";

(12) Employees or volunteers of sheltered workshops who are providing meaningful employment services for handicapped workers, so long as they do not use the "counselor" title;

(13) [Marital therapists or family therapists or both, certified by the American Association of Marriage and Family Therapists or an agent acceptable to the committee, and their supervisees, so long as they serve only individuals with marital or family systems concerns, and, so long as they do not use the titles of "counselor" or "counseling";

(14) Staff counselors employed by religious institutions in a religious counseling ministries program;

(15)] Drug abuse counselors certified by the department of mental health as meeting standards in rules promulgated pursuant to section 630.655, RSMo, certified by the Missouri substance abuse counselors certification board, or by an agent acceptable to the committee, so long as such counselors are practicing consistent with such standards, and they are serving only individuals with drug-related concerns;

[(16) Social workers, certified by the National Association of Social Workers, Inc., or by an agent acceptable to the committee, or workers under their supervision so long as they are doing work consistent with their training and with a code of ethics of the social work profession, and so long as they do not use the title of "professional counselor";

(17)] (14) Professionals in the employ of a governmental agency while rendering services in the performance of their duties;

[(18) Any person performing counseling, as defined in sections 337.500 to 337.540,

without receiving compensation, monetary or otherwise, and so long as they do not use the title of "professional counselor";

(19) (15) Employment counselors and interviewers, personnel officers, personnel analysts and consultants and related workers who in the normal course of their duties and responsibilities as employees of this state may engage in the screening, examination, assessment, referral or selection of individuals for employment or for consideration for employment;

[(20)] (16) Counselors and employees of employee assistance programs [which] **that** are members of the Association of Labor-Management Administrators and Consultants on Alcoholism, Inc., a Wisconsin corporation, or its successors or such other accrediting body for EAP Programs acceptable to the [committee] **board** who provide evaluation, assessment, information, and referral services so long as they are performing their assigned duties within the scope of their employment; provided, however, that this exemption shall not apply to individuals employed by employee assistance programs who provide direct long-term therapy and counseling services, as may be defined by regulation, so long as they do not use the title of counselor or counseling;

[(21)] (17) Individuals who are duly certified by the employee assistance certification commission as administered by the Association of Labor-Management Administrators and Consultants on Alcoholism, Inc., a Wisconsin corporation, or its successor; so long as the individual is an employee of a generally recognized employee assistance program and so long as such individual is performing services within the scope of such individual's employment and education;

[(22)] (18) Weight loss or weight control consultants or advisors in recognized, legitimate programs or business environments so long as they serve only individuals or groups who have weight related concerns and discuss only weight improvement issues and do not use the titles of "counselor" or "counseling" without using an adjective which describes to the ordinary person that the counseling is limited to weight loss or weight control;

[(23)] (19) Activity therapists as certified or licensed by their respective professional organizations including, but not limited to art, music, dance, recreation, and occupation, and who have received certification or licensure by their respective professional organizations by January 1, 1994, so long as they do not use the titles of "counselor" or "counseling";

[(24)] (20) Professionals certified by the American Board of Medical Psychotherapists and who have received certification from the American Board of Medical Psychotherapists by January 1, 1994, so long as they do not use the titles of "counselor" or "counseling"; [and

(25) Transactional analysts certified by the International Transactional Analysis Association and who have received certification from the International Transactional Analysis Association as a level one transactional analyst, specializing in clinical application by January 1, 1994, so long as they do not use the titles of "counselor" or "counseling";] or

[(26)] (21) Any person with a doctoral degree in anthropology received on or prior to December 31, 1989, and which was from an educational institution accredited by one of the regional accrediting associations approved by the council on postsecondary accreditation; provided further that said individual has completed at least twenty-four months of supervised clinical experience in psychotherapy under the supervision of a physician.

337.507. 1. Applications for examination and licensure as a professional counselor shall be in writing, submitted to the division on forms prescribed by the division and furnished to the applicant. The application shall contain the applicant's statements showing [his] **the applicant's** education, experience and such other information as the division may require. Each application shall contain a statement that it is made under oath or affirmation [and] that the information contained therein is true and correct to the best knowledge and belief of the applicant, subject to the penalties provided for the making of a false affidavit or declaration. Each application shall be accompanied by the fees required by the [committee] **board.**

2. The division shall mail a renewal notice to the last known address of each licensee prior to the [registration] **license** renewal date. **Notwithstanding this notice requirement, the failure to receive a license renewal notification from the division does not excuse the licensee from renewing his or her license required by law.** Failure to provide the division with the information required for [registration] **license renewal**, or to pay the [registration fee after such notice shall effect a revocation of the license after] **license renewal fee within** a period of sixty days from the [registration] **license** renewal date **shall cause the license to expire.** The license shall be restored if, within two years of the [registration] **license renewal** date, the applicant [provides] **submits** written application and the payment of the [registration] **licensure** fee and a delinquency fee.

3. A new certificate to replace any certificate lost, destroyed or mutilated may be issued subject to the rules of the [committee] **board**, upon payment of a fee.

4. The [committee] **board** shall set the amount of the fees [which] **authorized by** sections [337.500] **337.505** to 337.540 [authorize and require by rules and regulations promulgated pursuant to section 536.021, RSMo]. The fees shall be set at a level to produce revenue [which] **that** shall not substantially exceed the cost and expense of administering the provisions of sections [337.500] **337.505** to 337.540. All fees provided for in sections 337.500 to 337.540 shall be collected by the director who shall deposit the same with the state treasurer in [a fund to be known as the "Committee of Professional Counselors Fund"] **the board of counselors and therapists fund.**

5. [The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the

appropriation from the committee's fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the committee's fund for the preceding fiscal year.

6. The committee shall hold public examinations at least two times per year, at such times and places as may be fixed by the committee, notice of such examinations to be given to each applicant at least ten days prior thereto] **The board shall designate an examination as defined by rule for applicants seeking licensure as professional counselors or marital and family therapists.**

6. If a license has expired for more than two years and the applicant does not hold a valid, unrevoked, unsuspended license as a professional counselor in another state at the time of application to the board, the applicant shall pay the required fee and obtain continuing education relating to the practice of counseling as defined by board rule. Continuing education required pursuant to this subsection shall not exceed twenty hours of continuing education credit.

337.510. 1. Each applicant for licensure as a professional counselor shall furnish evidence to the [committee] **board** that:

(1) The applicant has met any one of the three following education-experience requirements:

(a) The applicant has received a doctoral degree with a major in counseling, or its equivalent, from an acceptable educational institution, as defined by division rules, and has completed at least one year of acceptable supervised counseling experience subsequent to receipt of the doctoral degree; or

(b) The applicant has received a specialist's degree with a major in counseling, or its equivalent, from an acceptable educational institution, as defined by division rules, and has completed at least one year of acceptable supervised counseling experience subsequent to receipt of the specialist's degree; or

(c) The applicant has received at least a master's degree with a major in counseling, or its equivalent, from an acceptable educational institution as defined by division rules, and has completed two years of acceptable supervised counseling experience subsequent to receipt of the master's degree. An applicant may substitute thirty semester hours of post-master's graduate study, or [their] **the** equivalent, for one of the two required years of acceptable supervised counseling experience, if such hours are clearly related to the field of professional counseling and are earned from an acceptable educational institution.

(2) Upon examination, the applicant is possessed of requisite knowledge of the profession, including techniques and applications, research and its interpretation, and professional affairs and ethics.

2. Any person holding a [valid] **current** unrevoked[,] **and** unsuspended [and unexpired] license, **certificate, or registration** as a professional counselor issued by a state

or territory of the United States having substantially the same **or greater** licensing requirements as this state shall be granted a license to [engage in the person's] **practice the occupation of a professional counselor** in this state upon application to the [committee] **board** accompanied by the appropriate fee as established by the [committee] **board** pursuant to section 337.507.

3. Any person who previously held a valid unrevoked, unsuspended license as a professional counselor in this state and who held a valid license **as a professional counselor** in another state at the time of application to the [committee] **board** shall be granted a license to engage in professional counseling in this state upon application to the [committee] **board** accompanied by the appropriate fee as established by the [committee] **board** pursuant to section 337.507.

4. The [committee] **board** shall issue a license to each person who files an application and fee as required by the provisions of sections [337.500] **337.505** to 337.540 and who furnishes evidence satisfactory to the [committee] **board** that the applicant has complied with the provisions of subdivisions (1) and (2) of subsection 1 of this section or with the provisions of subsection 2 or 3 of this section. The division shall issue a provisional professional counselor license to any applicant who meets all requirements of subdivisions (1) and (2) of subsection 1 of this section, but who has not completed the required one or two years of acceptable supervised counseling experience required by paragraphs (a) to (c) of subdivision (1) of subsection 1 of this section, and such applicant may reapply for licensure as a professional counselor upon completion of such acceptable supervised counseling experience.

337.515. Each license issued pursuant to the provisions of sections [337.500] **337.505** to 337.540 shall expire on the renewal date. The division shall renew any license upon application for renewal and upon payment of the fee established by the [committee] **board** pursuant to the provisions of section 337.507.

337.525. 1. The [committee] **board** may refuse to issue or renew any license required by the provisions of sections [337.500] **337.505** to 337.540 for one or any combination of causes stated in subsection 2 of this section. The [committee] **board** shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of [his] **their** right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The [committee] **board** may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections [337.500] **337.505** to 337.540 or any person who has failed to renew or has surrendered [his] **their** license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to engage in the occupation of

professional counselor; **except the fact that a person has undergone treatment for past substance abuse or alcohol abuse or has participated in a recovery program shall not by itself be cause for refusal to issue or renew a license;**

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of a professional counselor; for any offense an essential element of which is fraud, dishonesty or an act of violence; or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to the provisions of sections [337.500] **337.505** to 337.540 or in obtaining permission to take any examination given or required pursuant to the provisions of sections [337.500] **337.505** to 337.540;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) [~~Incompetency~~] **Incompetence**, misconduct, **gross negligence**, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections [337.500] **337.505** to 337.540, or of any lawful rule or regulation adopted pursuant to sections [337.500] **337.505** to 337.540;

(7) Impersonation of any person holding a license or allowing any person to use his or her license or diploma from any school;

(8) [~~Revocation or suspension~~] **Disciplinary action against the holder** of a license or other right to practice counseling granted by another state, territory, federal agency or country upon grounds for which [~~revocation or suspension~~] **discipline** is authorized in this state;

(9) [~~A person is finally adjudged~~] **Final adjudication as** incapacitated by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice professional counseling who is not licensed and currently eligible to practice under the provisions of sections [337.500] **337.505** to 337.540;

(11) [~~Issuance of~~] **Obtaining** a license based upon a material mistake of fact;

(12) Failure to display a valid license if so required by sections [337.500] **337.505** to 337.540 or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation [~~which~~] **that** is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is

primarily directed;

(15) [Being guilty of unethical conduct as defined in] **Violating** the ethical standards for **professional** counselors [adopted by the division and filed with the secretary of state] **as defined by board rule.**

3. Any person, organization, association or corporation [who reports or provides] **reporting or providing** information to the [committee] **board** pursuant to the provisions of [this chapter] **sections 337.505 to 337.540** and who does so in good faith shall not be subject to an action for civil damages as a result thereof.

4. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the [committee] **board** may censure or place the person named in the complaint on probation on such terms and conditions as the [committee] **board** deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license.

337.530. 1. Violation of any provision of sections [337.500] **337.505 to 337.540** shall be a class B misdemeanor.

2. All fees or other compensation received for services rendered in violation of sections [337.500] **337.505 to 337.540** shall be refunded.

3. The [department] **division, on behalf of the board,** may sue in its own name in any court in this state. The [department] **division** shall inquire diligently as to any violation of sections [337.500] **337.505 to 337.540,** [shall] **may** institute actions for penalties herein prescribed, and shall enforce generally the provisions of sections [337.500] **337.505 to 337.540.**

4. Upon application by the [committee] **board,** the attorney general may on behalf of the [committee] **board** request that a court of competent jurisdiction grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a certificate of registration or authority, permit or license is required **pursuant to sections 337.505 to 337.540,** upon a showing that such acts or practices were performed or offered to be performed without a certificate of registration or authority, permit or license; or

(2) Engaging in any practice or business authorized by a certificate of registration or authority, permit or license issued pursuant to [this chapter] **sections 337.505 to 337.540** upon a showing that the holder presents a substantial probability of serious harm to the health, safety or welfare of any resident of this state or client or patient of the licensee.

5. Any action brought pursuant to [the provisions of] this section shall be commenced either in the county in which such conduct occurred or in the county in which the defendant

resides.

6. Any action brought [under] **pursuant to** this section may be in addition to or in lieu of any penalty provided by [this chapter] **sections 337.505 to 337.540**, and may be brought concurrently with other actions to enforce [this chapter] **sections 337.505 to 337.540**.

[337.500. As used in sections 337.500 to 337.540, unless the context clearly requires otherwise, the following words and phrases mean:

- (1) "Committee", the committee for professional counselors;
- (2) "Department", the Missouri department of economic development;
- (3) "Director", the director of the division of professional registration in the department of economic development;
- (4) "Division", the division of professional registration;
- (5) "Licensed professional counselor", any person who offers to render professional counseling services to individuals, groups, organizations, institutions, corporations, government agencies or the general public for a fee, monetary or otherwise, implying that the person is trained, experienced, and licensed in counseling, and who holds a current, valid license to practice counseling;
- (6) "Practice of professional counseling", rendering, offering to render, or supervising those who render to individuals, couples, groups, organizations, institutions, corporations, schools, government agencies, or the general public any counseling service involving the application of counseling procedures, and the principles and methods thereof, to assist in achieving more effective intrapersonal or interpersonal, marital, decisional, social, educational, vocational, developmental, or rehabilitative adjustments;
- (7) "Professional counseling", includes, but is not limited to:
 - (a) The use of verbal or nonverbal counseling or both techniques, methods, or procedures based on principles for assessing, understanding, or influencing behavior (such as principles of learning, conditioning, perception, motivation, thinking, emotions, or social systems);
 - (b) Appraisal or assessment, which means selecting, administering, scoring, or interpreting instruments designed to assess a person's or group's aptitudes, intelligence, attitudes, abilities, achievement, interests, and personal characteristics;
 - (c) The use of referral or placement techniques or both which serve to further the goals of counseling;
 - (d) Therapeutic vocational or personal or both rehabilitation in relation to coping with or adapting to physical disability, emotional disability, or intellectual disability or any combination of the three;
 - (e) Designing, conducting, and interpreting research;

(f) The use of group methods or techniques to promote the goals of counseling;
(g) The use of informational and community resources for career, personal, or social development;

(h) Consultation on any item in paragraphs (a) through (g) above; and

(i) No provision of sections 337.500 to 337.540, or of chapter 354 or 375, RSMo, shall be construed to mandate benefits or third-party reimbursement for services of professional counselors in the policies or contracts of any insurance company, health services corporation or other third-party payer;

(8) "Provisional licensed professional counselor", any person who is a graduate of an acceptable educational institution, as defined by division rules, with at least a master's degree with a major in counseling, or its equivalent, and meets all requirements of a licensed professional counselor, other than the supervised counseling experience prescribed by subdivision (1) of section 337.510, and who is supervised by a person who is qualified for the practice of professional counseling.]

[337.520. 1. The division shall promulgate rules and regulations pertaining to:

(1) The form and content of license applications required by the provisions of sections 337.500 to 337.540 and the procedures for filing an application for an initial or renewal license in this state;

(2) Fees required by the provisions of sections 337.500 to 337.540;

(3) The content, conduct and administration of the licensing examination required by section 337.510;

(4) The characteristics of "acceptable supervised counseling experience" as that term is used in section 337.510;

(5) The equivalent of the basic educational requirements set forth in section 337.510;

(6) The standards and methods to be used in assessing competency as a professional counselor;

(7) Establishment and promulgation of procedures for investigating, hearing and determining grievances and violations occurring under the provisions of sections 337.500 to 337.540;

(8) Development of an appeal procedure for the review of decisions and rules of administrative agencies existing under the constitution or laws of this state;

(9) Establishment of a policy and procedure for reciprocity with other states, including states which do not have counselor licensing laws or states whose licensing laws are not substantially the same as those of this state;

(10) The characteristics of "an acceptable educational institution" as that term is used in section 337.510;

(11) The characteristics of an acceptable agent for the certification of an exempted occupation as listed in subdivisions (11) and (13) of section 337.505; and

(12) The form and content of "ethical standards for counselors" as that term is used in subdivision (15) of subsection 2 of section 337.525.

2. No rule or portion of a rule promulgated under the authority of sections 337.500 to 337.545 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

[337.535. 1. There is hereby established the "Committee for Professional Counselors" which shall guide, advise, and make recommendations to the division and fulfill other responsibilities designated by this chapter. The committee shall approve the examination required by section 337.510 and shall assist the division in carrying out the provisions of sections 337.500 to 337.540.

2. The committee shall consist of six members, including one public member, appointed by the governor with the advice and consent of the senate. Each member of the committee shall be a citizen of the United States and a resident of this state and, except as provided hereinafter, shall be licensed as a professional counselor by this state. Beginning with the appointments made after August 28, 1992, two members shall be appointed for four years, two members shall be appointed for three years and two members shall be appointed for two years. Thereafter, all members shall be appointed to serve four-year terms. No person shall be eligible for reappointment who has served as a member of the committee for a total of eight years. The membership of the committee shall reflect the differences in levels of education and work experience with consideration being given to race, gender and ethnic origins. Not more than two counselor educators shall be members of the committee at the same time. The president of the American Counseling Association of Missouri in office at the time shall, at least ninety days prior to the expiration of the term of the committee member, other than the public member, or as soon as feasible after the vacancy on the committee otherwise occurs, submit to the director of the division of professional registration a list of five professional counselors qualified and willing to fill the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the American Counseling Association of Missouri shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association.

3. A vacancy in the office of a member shall be filled by appointment by the governor for the remainder of the unexpired term.

4. Each member of the committee shall receive as compensation, an amount set by the committee not to exceed fifty dollars for each day devoted to the affairs of

the committee, and shall be reimbursed for necessary and actual expenses incurred in the performance of his or her official duties. All staff for the committee shall be provided by the division.

5. The committee shall hold an annual meeting at which it shall elect from its membership a chairperson and secretary. The committee may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting must be given to each member at least three days prior to the date of the meeting. A quorum of the committee shall consist of a majority of its members.

6. The governor may remove a committee member for misconduct, incompetency or neglect of his or her official duties after giving the committee member written notice of the charges against the committee member and an opportunity to be heard thereon.

7. The public member shall be at the time of his or her appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated pursuant to sections 337.500 to 337.540 or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by sections 337.500 to 337.540, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 337.500 to 337.540. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.]

[337.540. Any communication made by any person to a licensed professional counselor in the course of professional services rendered by the licensed professional counselor shall be deemed a privileged communication and the licensed professional counselor shall not be examined or be made to testify to any privileged communication without the prior consent of the person who received his professional services, except in violation of the criminal law.]

[337.700. As used in sections 337.700 to 337.739, the following terms mean:

- (1) "Committee", the state committee for family and marital therapists;
- (2) "Department", the Missouri department of economic development;
- (3) "Director", the director of the division of professional registration in the department of economic development;
- (4) "Division", the division of professional registration;
- (5) "Fund", the marital and family therapists' fund created in section 337.712;
- (6) "Licensed marital and family therapist", a person to whom a license has been issued pursuant to the provisions of sections 337.700 to 337.739, whose license